



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
High Desert District – Rock Springs Field Office
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Rock Springs, WY 82901-3447
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Decision Record
Bureau of Land Management
Rock Springs Field Office

AUG 29 2017

Adobe Town, Salt Wells Creek and Great Divide Basin
Herd Management Areas
Wild Horse Gather
DOI-BLM-WY-D040-2017-0022-EA

BACKGROUND:

The Bureau of Land Management (BLM) Rock Springs Field Office (RSFO) conducted wild horse census flights in April of 2017. The results of this census demonstrated that wild horses are exceeding the Appropriate Management Levels (AMLs) in the Adobe Town, Salt Wells Creek and Great Divide Basin Herd Management Areas (HMAs). Section 3 of the Wild and Free-Roaming Horses and Burros Act (WFRHBA) requires that the BLM manage wild horses in a way that promotes a Thriving Natural Ecological Balance (TNEB). AMLs are established to ensure a TNEB can be reached when managing wild horse populations.

Additionally, the BLM has received a written request to remove wild horses from private lands within these HMAs. Section 4 of the WFRHBA requires the removal of wild horses from private lands after receiving a written request from the landowner to do so. Through a series of legal proceedings the BLM RSFO entered into a Consent Decree in April of 2013 [*Rock Springs Grazing Association v. Salazar*, Civil Action No. 11-CV- 263-NDF (D.Wyo.)]. This decree (2013 Consent Decree) requires the periodic removal of wild horses from the “checkerboard” lands in these HMAs, based on the population size and location of wild horses as observed during annual census flights. The results of the 2017 census flights demonstrate a need to remove wild horses from these HMAs to maintain AML and meet the 2013 Consent Decree.

In a subsequent lawsuit over a removal conducted under the 2013 Consent Decree (*American Wild Horse Preservation Campaign v. Jewell*, No. 15-8033 (10th Cir.)), in October 2016 the Tenth Circuit Court of Appeals ruled that the BLM could not remove excess wild horses from all checkerboard lands within these HMAs solely under the authority of Section 4 of the WFRHBA. The court ruled that the BLM had to comply with Section 3 of the WFRHBA, including the maintenance of AML, if removing excess wild horses from public lands within the checkerboard.

As a result of these factors the BLM has determined that it is necessary to remove wild horses from these HMAs to comply with Sections 3 and 4 of the WFRHBA as well as the 2013 Consent Decree. Environmental Assessment (EA) DOI-BLM-WY-D040-2017-0022-EA was prepared to analyze possible alternatives to address this issue.

DECISION:

Based on the analysis in Environmental Assessment DOI-BLM-WY-D040-2017-0022-EA, it is our decision to implement a gather, as described in Alternative B (Proposed Action) of the EA. This alternative implements the planning decisions from the 1997 Green River Resource Management Plan (RMP) as well as the 2008 Rawlins RMP to maintain the Adobe Town, Salt Wells Creek and the Great Divide Basin HMAs within established AMLs. The AML for each HMA is: 610 – 800 for Adobe Town, 251 – 365 for Salt Wells Creek and 415 – 600 for Great Divide Basin.

The wild horses would be monitored and the populations would be maintained within AML. Approximately 1,560 wild horses will be removed from these HMAs as a result of this action as follows: 513 from the Adobe Town HMA, 725 from the Salt Wells Creek HMA and 322 from the Great Divide Basin HMA.

We have carefully considered all public comments received on the EA, and wish to thank all commenters for their interest in public lands management and their sincere concern for the preservation of wild horses on public lands.

This decision is issued in accordance with Title 43 of the Code of Federal Regulations (CFR) at section 4770.3(c), which states, in part, “decisions to remove wild horses . . . from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective on issuance or on a date established in the decision.” This decision will be implemented on or after September 15, 2017.

RATIONALE FOR ALTERNATIVE SELECTED

As described in the Background section, BLM has a need to comply with both Sections 3 and 4 of the WFRHBA, as well as the 2013 Consent Decree. The most appropriate way to accomplish this need within these HMAs is to conduct a wild horse gather and remove wild horses to low AML within each of these HMAs. Removal of excess wild horses to low AML will address an overpopulation of wild horses and will also allow for a TNEB within these areas. It will also address the request to remove wild horses from private lands within the HMAs.

As discussed in Section 1.4 of the EA, this alternative would comply with the Federal Land Policy and Management Act (FLPMA), the WFRHBA, the associated land use plans, and all other applicable laws and regulations. This decision is also made in consideration of the Finding of No Significant Impact (FONSI) for EA DOI-BLM-WY-D040-2017-0022-EA.

An alternative was analyzed in the EA that would have inoculated some of the mares that were captured with the Porcine Zona Pellucida (PZP) vaccine and then released them back into the HMAs. This would have temporarily slowed the reproductive rate of the herds in these HMAs. This alternative was not selected because of two primary challenges with implementing it. First, the BLM is obligated to conduct a gather in 2017 as per the consent decree. Because of the timing of the gather, it would likely become challenging to return treated wild horses to the HMAs due to inclement weather. Secondly, these wild horses would need to be released back onto solid block BLM in order to ensure compliance with the consent decree. Doing so would concentrate the majority of the wild horses within a smaller portion of the HMA. This would likely lead to an overuse of vegetation resources within this area, and would not promote a TNEB.

The Proposed Action allows wild horses to remain in healthy populations on the range, while protecting rangeland resources and allowing for multiple use management of the land. The gather is necessary in order to protect rangeland resources (such as forage and water availability) and to prevent the significant threat of degradation to the public lands. Delaying the gather may also unduly impact the private land holders' resources by reducing water and forage availability on their lands.

AUTHORITIES

The gather and removal of wild horses is provided for in the WFRHBA, as amended by FLPMA and the Public Rangelands Improvement Act of 1978 (PRIA). The WFRHBA requires the protection, management, and control of wild horses on public lands. BLM has determined that there is an excess of wild horses, in which, Section 3 of the WFRHBA provides the authority to gather and remove excess wild horses to within AML upon both public and private lands. Section 4 of the WFRHBA requires that we respond to the request of private landowners to remove wild horses from private lands.

The decision conforms to the Green River RMP (Record of Decision, 1997) and the Rawlins Resource Management Plan (Record of Decision, 2008), which recognizes that wild horse numbers above the AML, as specified in the RMPs, are considered "excess" and subject to gathering and removal.

In addition, in April 2013, the U.S. District Court for Wyoming entered the consent decree between BLM and the Rock Springs Grazing Association (RSGA) in case 11-CV-263-NDF. The 2013 Consent Decree resolved litigation involving BLM's responsibilities to remove wild horses from private lands in these HMAs under Section 4 of the WFRHBA, 16 USC 1334. The proposed action to remove wild horses from these HMAs is necessary to meet the terms of the 2013 Consent Decree.

COMPLIANCE AND MONITORING

The BLM will monitor gather operations for adherence to the Standard Operating Procedures for Wild Horse Gathers as outlined in Appendices II of the EA and the design of the selected action. The BLM will also continue to monitor wild horse populations within these HMAs.

STATUTORY AND LAND USE PLAN CONFORMANCE

As explained herein, this removal is in compliance with the WFRHBA, as amended; and the two governing land use plans: the 1997 Green River and 2008 Rawlins RMPs, respectively; as amended.

The FLPMA and its land use planning requirements apply only to the BLM's management of the public lands, not private lands, 43 U.S.C. §1712. As to public lands, the policies of FLPMA are to be construed as supplemental to and not in derogation of the purposes for which the lands are administered under other provisions of law, 43 U.S.C. §1701.

This decision authorizes the gather and removal of wild horses from the three HMAs, in compliance with Section 3 of the WFRHBA, 16 U.S.C. §1333, its implementing regulations at 43 CFR 4720.1. This decision also complies with Section 4 of the WFRHBA, 16 U.S.C. §1334, its implementing regulations at 43 CFR 4720.2, and is consistent with the 2013 Consent Decree.

PROJECT DESIGN FEATURES, TERMS, CONDITIONS, and STIPULATIONS

Standard Operating Procedures for Wild Horse Removal can be viewed in Appendix II of the EA. In addition, the Selective Removal Criteria, Gather Operations, and Data Collection have been incorporated as part of the selected action.

PUBLIC INVOLVEMENT

DOI regulations require public participation when preparing an EA to the extent practicable, but the methods of providing that participation are at the discretion of the authorized official.

43 CFR 46.305(a). Scoping and publication of a "draft" EA are not required. *Id.* The BLM must consider comments that are timely received. *Id.* The BLM may revise EAs based on comments received without need of initiating another comment period. 43 CFR 46.305(b).

A public scoping letter was issued on March 6, 2017, requesting comments by April 4, 2017. In excess of 3,400 comments were received from individuals, organizations, and agencies during the scoping period. The EA (DOI-BLM-WY-D040-2017-0022-EA) for gathering wild horses was available for public review on July 12, 2017, requesting comments by August 10, 2017. Over 2,478 comments were received from individuals, organizations, and agencies during the public review period. Appendix I of the EA provides a Summary of Scoping and Public Review Comments. Public comments have been incorporated into the EA, Decision Record and FONSI as appropriate and are made part of this decision.

EFFECTIVE DATE

The BLM is exercising the authority provided by 43 CFR 4770.3(c) to make this decision effective upon September 15, 2017. The BLM currently plans to commence with the gather on or after September 15, 2017, to fulfill its obligations as stated above.

ADMINISTRATIVE PROCEDURES

This decision is issued in accordance with 43 CFR 4770.3(c) which states in part that certain wild horse removal decisions, "shall be effective upon issuance or on a date established in the decision." Once the decision is final, it will be subject to appeal. If you wish to appeal this decision, as provided by 43 CFR 4770.3 and 43 CFR 4.4, you must file an appeal in writing within 30 days of receipt of this decision with the Field Manager, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

The appeal must state clearly and concisely why you think the decision is in error.

Should you wish to file a petition for stay, the appellant shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied.
- 2) The likelihood of the appellant's success on the merits.
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

If you decide to also submit a petition for stay of the decision, a copy of the notice of appeal and petition for stay must be served simultaneously upon the parties identified below.

Field Manager
Rock Springs Field Office
280 Highway 191 North
Rock Springs, Wyoming 82901

Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, Suite 300
Arlington, Virginia 22203

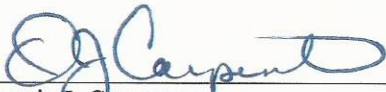
Office of the Regional Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals; therefore, they will not be accepted.



Kimberlee D. Foster
Rock Springs Field Manager

Date: AUG 29 2017



Dennis J. Carpenter
Rawlins Field Manager

Date: AUG 29 2017